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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196118

DATE: January 30, 1980

MATTER OF: Crown Laundry and Cleaners

DIGEST:

Where bid evaluation provisions of solicitation will not result in award of contract on basis of most favorable cost to Government for performance period (including options) which meets agency's reported needs, solicitation is defective and should be canceled.

Crown Laundry and Cleaners (Crown) protests the proposed award of a contract for laundry services at Fort Ord, California, to Tri-States Service Company (Tri-States) under invitation for bids (IFB) No. DAKF03-79-B-0074, issued by the Department of the Army. Crown claims that it was the low bidder for the contract.

The Army issued the solicitation for a fixed-price requirements type contract on July 6, 1979, to operate Government-owned laundry facilities for laundry services currently being performed by Government personnel at Fort Ord. Section D-3 of the IFB provided as follows:

"COST COMPARISON EVALUATION: IN-HOUSE
VERSUS CONTRACTING COST"

"The Government's in-house cost estimate will be compared with the bid/offer of the lowest responsive and responsible bidder/offeror, as determined by the contracting officer. If the cost of contracting * * * is lower than the Government's adjusted * * * in-house cost estimate, a contract will be awarded if otherwise appropriate. * * *

"It should be noted that the Government cost comparison will be based on a 3-year cost estimate. The contractor's bid/offer, if prices for second or third performance [years] have not been requested, and the Government costs (such as personnel) will be straight-lined for the second and subsequent years. * * * For solicitations involving firm fixed price type contracts, the second and third year option prices will be used to determine contractor costs for both cost evaluation purposes and determining firm option prices for subsequent years. * * *"

No separate prices for the second and third years' performance were requested although the solicitation did not prohibit the submission of separate prices. The solicitation also contained an option provision which gave the Government the right to "renew" the contract for a total duration of 3 years.

Bids were opened on August 27, 1979, with seven bids received. Tri-States bid \$614,204 (based on the estimated quantities to be ordered) for the basic contract year with a prompt payment discount of 32.7%, for an evaluated price of \$424,547. Crown bid \$553,734 and offered prompt payment discounts of 30% for the first year, for an evaluated price of \$402,936, 15% for the second year, for a price of \$478,355 and 1/4 of 1% the third year, for a price of \$552,478.

The contracting officer straightlined Tri-States' bid for the second and third years to arrive at a 3-year estimated price of \$1,273,641. Since Crown submitted different prompt payment discounts for each year, the contracting officer used those discounts to arrive at Crown's 3-year estimated price of \$1,433,750. Tri-States was declared the low bidder, and the Army proposed making award to Tri-States because its bid was less than the Government's adjusted in-house cost estimate.


Crown argues that the Government should have straightlined its first year bid to arrive at the 3-year cost of the contract for evaluation purposes, without reference to the actual bid it submitted for the option years. It believes that because the Government only requested a 1-year price, that it was the low bidder entitled to the contract award.

We agree that Crown is the low bidder if only its base year price is considered for bid evaluation purposes, although it is obvious that it is not low if its actual option prices are considered. Thus an award to Crown could ultimately result in a significantly higher cost to the Government if the contract, through the exercise of the two one year options, were permitted to run for three years. Nonetheless, section D-3, does not provide for the evaluation of option prices for bid evaluation purposes, i.e., its purpose is plainly restricted to cost comparison or evaluation of Government and contracting costs. We point out that the Defense Acquisition Regulation (DAR) § 1-1504 (1976) provides specific methodology by which option prices can be considered for bid evaluation purposes although it was not used in this solicitation. However, we think it is clear that the agency intended to consider option prices for bid evaluation as well as cost comparison purposes and that it could, in essence, have achieved that result if Crown had not bid separate option prices.

The advertising statute governing this procurement requires that award be made "to the responsible bidder, whose bid conforms to the invitation and will be most advantageous to the United States, price and other factors considered." 10 U.S.C. § 2305(c) (1976). This language requires award on the basis of the most favorable cost to the Government. See Square Deal Trucking Co., Inc., B-183695, October 2, 1975, 75-2 CPD 206. Inasmuch as the Army reports that "under the policies governing the acquisition of commercial or industrial type services it [intended] to run the contract for three years," award to Crown, the low bidder under the bid evaluation provisions of this solicitation would be improper as award to that firm would not

in actuality be made "on the basis of the most favorable cost to the Government" for the 3-year period intended for the performance of this contract. Thus we believe the solicitation is defective because the provisions for bid evaluation do not adequately express the Government's intent or reflect the reported actual needs of the Government. In this circumstance we recommend that no award be made and that the solicitation should be canceled and the requirement re-advertised in accordance with the DAR provisions cited above.

The protest is denied in part and sustained in part.



For The Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-196118

January 30, 1980

The Honorable Clifford L. Alexander, Jr.
The Secretary of the Army

Dear Mr. Secretary:

We refer to the protest of Crown Laundry and Cleaners over the award of a contract for laundry services at Fort Ord, California, under solicitation number DAKFO3-79-B-0074. For the reasons stated in our decision of today (copy enclosed), it is our opinion that the solicitation should be canceled and the requirement readvertised because the bid evaluation provisions are defective and will not result in the award of a contract at the most favorable cost to the Government for the performance period (including options) for your Department's reported needs. Any resolicitation should conform to the requirements of the Defense Acquisition Regulation for the evaluation of options.

In addition, we note that all bidders made extensive use of 20-day prompt payment discounts of substantial magnitude as a means by which their bids could be evaluated at prices substantially below those bid. Because agencies are often unable to process payments within 20 days, your Department may wish to consider appropriate limitations on these discounts to reflect their actual value to the Government.

Please advise us of the actions taken by your Department regarding our recommendation.

Sincerely yours,

For The Comptroller General
of the United States

Enclosure